

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ANGELIQUE JENKINS :  
 :  
 v. : Case No. PERA-C-19-61-E  
 :  
 TRANSPORT WORKERS UNION LOCAL 234 :  
 :

**FINAL ORDER**

Angelique Jenkins (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 1, 2019. The Complainant's exceptions challenge the April 23, 2019 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed pursuant to the Public Employee Relations Act (PERA) against the Transport Workers Union Local 234 (TWU).

In the Charge filed on March 20, 2019, the Complainant alleged that TWU refused to represent her regarding her discharge from employment with the Southeastern Pennsylvania Transportation Authority (SEPTA). The Complainant alleged that TWU's actions violated Section 1201(b)(1), (2), (3), (4), and (9) of the PERA.

The Secretary declined to issue a complaint on the Charge because the courts, rather than the Board, possess exclusive jurisdiction to entertain claims that employe representatives have breached their duty of fair representation, citing Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, 500 Pa. 326, 456 A.2d 979 (1982); Case v. Hazelton Area Educational Support Personnel Association (PSEA/NEA), 928 A.2d 1154 (Pa. Cmwlth. 2007) (en banc); and Narcotics Agents Regional Committee, FOP Lodge No. 74 v. AFSCME, AFL-CIO, 780 A.2d 863 (Pa. Cmwlth. 2001). Therefore, the Secretary dismissed the Charge.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right; rather, it is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

The Complainant argues in her exceptions that her discharge from employment for violating a Last Chance Agreement (LCA) was pretextual, and that she was actually fired as a result of her future plans to run for President of the TWU. As such, the Complainant contends that she was entitled to representation by TWU in arbitration against SEPTA concerning her discharge, and that TWU's failure to provide such representation violated the PERA. However, as noted above, the charge does not set forth a cause of action under the PERA because the Board

lacks jurisdiction over the Complainant's claim against TWU for allegedly breaching its duty of fair representation.

The Board lacks jurisdiction to entertain claims that a union has violated its duty of fair representation. Ziccardi, supra; Case, supra; Narcotics Agents, supra. In Case, the Commonwealth Court reaffirmed the well-settled case law concerning jurisdiction over duty of fair representation claims and held, as follows:

Individual claims by employees against the union that allege a breach of the duty of fair representation do not qualify as unfair labor practices in violation of PERA. The [Board's] expertise lies in resolving disputes involving alleged violations of the provisions of PERA, not in remedying an individual injustice to an employee by an employee's representative union.

928 A.2d at 1161.

In this matter, because the Complainant's Charge sounds only in allegations that TWU violated its duty of fair representation, the Board has no jurisdiction over her claim. Accordingly, the Secretary did not err in dismissing the Complainant's Charge of Unfair Practices.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Angelique Jenkins are dismissed and the Secretary's April 23, 2019 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member, this sixteenth day of July, 2019. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.